

ENTERED

October 13, 2017

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KEITH COLE, et al.,

§

Plaintiffs,

§

v.

§

CIVIL ACTION NO. 4:14-cv-1698

BRYAN COLLIER, et al.,

§

Defendants.

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MEMORANDUM AND ORDER

Pending before this Court are Stanley Sherman's Motion for Appointment of Counsel (Doc. No. 775) and R. Wayne Johnson's Motion to Vacate (Doc. No. 815).

In this case, the Court has been asked by Plaintiffs to require improvements in prison conditions related to temperature and heat mitigation at the Wallace Pack Unit. On June 14, 2016, the Court certified one general class and two subclasses, which consist of individuals who currently are or will be incarcerated at the Wallace Pack Unit. (Doc. No. 473.) Mr. Sherman is incarcerated at the Wallace Pack Unit. Mr. Johnson is incarcerated at the Clements Unit.

For the reasons set forth below, the pending motions of Mr. Sherman and Mr. Johnson are denied.

I. Motion for Appointment of Counsel

Mr. Sherman requests that the Court appoint counsel for him and order an investigation into alleged retaliation against him. (Doc. No. 775 at 2.) Mr. Sherman is a resident of the Wallace Pack Unit, and is therefore a member of the class in this case. *See* Doc. No. 473 at 2-3, 22. The alleged retaliation for which Mr. Sherman seeks representation and investigation is

related to Mr. Sherman’s medical care. (Doc. No. 775 at 1-2.) For example, Mr. Sherman states that he has been retaliated against for “writing up medical” and that he has received insufficient medication. *Id.* The issues that Mr. Sherman raises are separate and distinct from Plaintiffs’ claims in this case, which relate to temperature and heat mitigation at the Wallace Pack Unit. (Doc. No. 629.) To the extent that Mr. Sherman is experiencing retaliation connected to the claims in this case, class counsel represents Mr. Sherman’s interests. See Fed. R. Civ. P. 23(b), (g). The Court does not opine on the merits of Mr. Sherman’s claims, rather, this case is not the proper vehicle for addressing Mr. Sherman’s allegations. Mr. Sherman’s motion for appointment of counsel and request for a court order requiring investigation therefore are denied.

II. Motion to Vacate

Mr. R. Wayne Johnson moves to vacate the Court’s memorandum and opinion granting Plaintiffs’ motion for a preliminary injunction (Doc. No. 771) and the Court’s order regarding preliminary injunction remedies (Doc. No. 737). (Doc. No. 815 at 5.) Mr. Johnson is currently incarcerated in the Clements Unit in Amarillo, Texas. Therefore, he is not a member of the class. The Court denied Mr. Johnson’s prior motion to intervene on May 16, 2017. (Doc. No. 633.) Mr. Johnson is not a party to this case and thus lacks standing to bring this motion before the Court.

III. Conclusion

For the above reasons, Mr. Sherman’s Motion for Appointment of Counsel (Doc. No. 775) and Mr. Johnson’s Motion to Vacate (Doc. No. 815) are **DENIED**.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this 12th day of October, 2017.


Keith P. Ellison
KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE